

**To:** Tom Schadt[tschadt@anchorqea.com]; David Bridgers[David.bridgers@wallerlaw.com]  
**Cc:** Amron, Susan[samron@law.nyc.gov]; Weissbard, Ron[RWeissbard@dep.nyc.gov]; Reyhan Mehran - NOAA Federal[Reyhan.Mehran@noaa.gov]; ian.beilby@dec.ny.gov[ian.beilby@dec.ny.gov]; Kwan, Caroline[kwan.caroline@epa.gov]; Schmidt, Mark[schmidt.mark@epa.gov]; Vaughn, Stephanie[Vaughn.Stephania@epa.gov]; Mintzer, Michael[Mintzer.Michael@epa.gov]; Naranjo, Eugenia[Naranjo.Eugenia@epa.gov]; Leonard, Edward L.[leonardel@cdmsmith.com]; Mayo, Joseph[MayoJJ@cdmsmith.com]; Cooke, Daniel W.[cookedw@cdmsmith.com]  
**From:** Sivak, Michael  
**Sent:** Tue 3/28/2017 8:50:25 PM  
**Subject:** RE: Newtown Creek: BERA Dispute Meeting

EPA is writing in connection with the dispute by the Newtown Creek Group of respondents (NCG Respondents), disputing the requirements of EPA's e-mail of December 8, 2016 which directed that Anchor, on behalf of the respondents, provide to EPA by January 23, 2017, a modified Draft Baseline Ecological Risk Assessment ("BERA") responsive in full to EPA comments transmitted by the December 8 email. This dispute was invoked by letter dated December 22, 2016 (sent to EPA by email on December 22) on behalf of the NCG respondents, pursuant to the "Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study" (AOC) at the Newtown Creek Superfund site.

By previous emails, EPA extended the Negotiation Period for the dispute until close of business on March 28, 2017.

At the wrap-up meeting for the BERA dispute on March 21, I said that I anticipated issuing my dispute resolution decision by April 4. Thus, by this email, EPA is extending the Negotiation Period for the BERA dispute until close of business on April 4, 2017.

Michael Sivak

212.637.4310

**From:** Sivak, Michael  
**Sent:** Tuesday, March 14, 2017 3:36 PM  
**To:** Tom Schadt <tschadt@anchorqea.com>; David Bridgers <David.bridgers@wallerlaw.com>  
**Cc:** Amron, Susan <samron@law.nyc.gov>; 'Weissbard, Ron' <RWeissbard@dep.nyc.gov>; 'Reyhan Mehran - NOAA Federal' <Reyhan.Mehran@noaa.gov>; ian.beilby@dec.ny.gov; Kwan, Caroline <kwan.caroline@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; Vaughn, Stephanie <Vaughn.Stephania@epa.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>; Naranjo, Eugenia <Naranjo.Eugenia@epa.gov>; Leonard, Edward L.

<leonardel@cdmsmith.com>; Mayo, Joseph <MayoJJ@cdmsmith.com>; 'Cooke, Daniel W.' <cookedw@cdmsmith.com>

**Subject:** Newtown Creek: BERA Dispute Meeting

The final planned meeting to discuss the issues under dispute for the Newtown Creek BERA is scheduled for March 21 at 2 PM at 666 Fifth Avenue, 26th Floor, Conference Room D/E, New York City. Based on the recent summary submitted by AQ on March 9, 2017 and a review of the letter from David Bridgers dated December 22, 2016 invoking dispute resolution, there are four technical issues and one administrative issue that remain unresolved and in dispute by the NCG. These issues are:

Technical issues:

- Reference areas
- 10-day Sediment toxicity test results
- Wildlife exposure modifying factors
- Selection of tissue thresholds

Administrative issue:

- Due date for submittal of revised BERA

The meeting is scheduled for two hours. As there has been significant discussion between EPA and AQ on these issues since the initial meeting to discuss the dispute, there is a need for both AQ, on behalf of the NCG, and EPA to present their current positions on these issues. I propose the following agenda, in order to address each of the outstanding issues in the dispute:

- Introduction and summary: M. Sivak (5 minutes)
- Reference areas
- AQ discussion (10 minutes)

- EPA discussion (10 minutes)
- Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- 10-day Sediment toxicity test results
- AQ discussion (10 minutes)
- EPA discussion (10 minutes)
- Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- Wildlife exposure modifying factors
- AQ discussion (10 minutes)
- EPA discussion (10 minutes)
- Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- Selection of tissue thresholds
- AQ discussion (10 minutes)
- EPA discussion (10 minutes)
- Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- Due date for submittal of revised BERA
- AQ recommendation and EPA recommendation (5 minutes)
- Summary: M. Sivak (10 minutes)

Finally, with this communication, I am extending the due date of the dispute period until March 28, one week after the meeting.

Michael Sivak

Chief, Passaic, Hackensack and Newark Bay Remediation Branch  
EPA Region 2 Superfund Program

sivak.michael@epa.gov  
tel: 212.637.4310